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Attorney for Richard A. Yanagi, Trustee

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

| | | |
|-------------------|---|----------------------|
| In re: |) | Bk. No. 09-2978 |
| |) | (Chapter 7) |
| HONOLULU SYMPHONY |) | |
| SOCIETY |) | |
| |) | DATE: March 16, 2011 |
| Debtor. |) | TIME: 2:00 p.m. |
| |) | JUDGE: LLOYD KING |
| |) | |

ORDER GRANTING TRUSTEE'S MOTION FOR: (1) AUTHORITY TO SELL
PERSONAL PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS;
(2) EMPLOY HERITAGE GLOBAL PARTNERS, AUCTIONEER; (3)
REIMBURSE AUCTIONEER FOR EXPENSES UP TO \$25,000 AND APPROVE
COMPENSATION FOR AUCTIONEER; AND (4) APPROVE BIDDING
PROCEDURES

The Motion filed by Richard A. Yanagi, Trustee herein, for (1)
Authority To Sell Personal Property Of The Estate Free And Clear Of Liens;
(2) Employ Heritage Global Partners, Auctioneer; (3) Reimburse Auctioneer For
Expenses Up To \$25,000 And Approve Compensation For Auctioneer; And (4)
Approve Bidding Procedures came on for hearing on March 16, 2011. Elizabeth A.

Kane, Esq. appeared on behalf of the Trustee. Also appearing were Tina Coleman, Esq. on behalf of the debtor, David C. Farmer, Esq. on behalf of Musicians' Association of Hawaii Local 677, American Federation of Musicians, and Stephen M. Gelber, Esq. on behalf of the Symphony Exploratory Committee.

The Court has reviewed the Motion, the Declaration, Exhibits, and Memoranda in support of and in opposition thereto, including the Trustee's Supplemental Memorandum requesting approval of an Asset Purchase Agreement for the sale of the assets of the estate to Symphony Exploratory Committee, and the terms thereof, and has heard the arguments of counsel. Good cause appearing, it is hereby ORDERED, ADJUDGED, AND DECREED THAT:

The Motion is Granted.

(1) The Trustee is authorized to employ Heritage Global Partners as auctioneer for the estate, and to pay Heritage Global Partners from the proceeds of the sale, without further order of Court, a Buyer's Premium of 10% of the purchase price, plus reimbursement of its expenses of up to \$25,000.00.

(2) The Trustee is authorized to sell the assets of the estate, as identified more particularly in the attached Exhibit "1" to Symphony Exploratory Committee ("SEC") or, if overbids are received pursuant to the procedures set forth herein, the highest bidder at auction.

(3) The auction may be conducted on or about March 17, 2011. All assets shall be sold in one lot.

(4) All prospective overbidders will be required to post a refundable deposit of \$25,000.00 before being eligible to bid.

(5) The deposit would be refunded if the bidder is not the successful bidder at the auction.

(6) Before bidding, each bidder is required to sign a bid form in substantially the form attached hereto as Exhibit "2."

(7) Any initial competing bid must include consideration in a minimum amount of at least \$235,000.00 (exclusive of Buyer's Premium) in cash.

(8) If there are no competing opening overbids, the estate assets shall be deemed sold to SEC for \$210,000.00 (exclusive of Buyer's Premium).

(9) Each subsequent bid after the initial competing bid shall be in increments of at least \$10,000.00 (exclusive of Buyer's Premium).

(10) The successful bidder (other than SEC) must pay to the Trustee the full amount of such successful bidder's bid amount within 48 hours after the conclusion of the auction.

(11) If the successful bidder (other than SEC) does not pay such successful bidder's bid amount in full within 48 hours after the conclusion of the auction, such bidder's \$25,000.00 deposit shall be forfeited, and the Trustee shall be free to sell the estate assets to the next highest bidder then willing and able to close.

(12) In the event that SEC is not the highest bidder at the auction, and the Trustee sells the assets to another entity, SEC shall be entitled to a breakup fee in the amount of \$15,000.00.

(13) The Trustee is authorized to convey the Property free and clear of all liens and interests, with the liens to attach to the proceeds of the sale.

(14) The Trustee is authorized to convey the property AS IS, WHERE IS, WITH ALL FAULTS WITH NO REPRESENTATIONS MADE BY SELLER.

(15) In the event that there is no qualifying opening bid or SEC is the highest bidder at the auction, the Court shall conduct a further hearing on March 30, 2011, at ^{9:30 a.m.}~~2:00 p.m.~~, before the Honorable Robert J. Faris, in his courtroom at 1132 Bishop Street, 350L, Honolulu, Hawaii, 96813, or as soon thereafter as counsel may be heard, to consider confirming the sale to SEC free and clear of any and all liens, claims, and encumbrances pursuant to Sections 105(a) and 363, specifically, Sections 363(b), (f), and (m) of the Bankruptcy Code, to consider finding that SEC is a good faith purchaser within the meaning of Section 363(m) of the Bankruptcy Code, and to grant such other relief as is appropriate.

(16) The 14 day stay imposed by Rule 6004(h) shall not apply in this case.

DATED: Honolulu, Hawaii,

March 17, 2011

[Signature]

United States Bankruptcy Judge

EXHIBIT “1”

Musical Instruments. All musical instruments, including concert pianos, sleds, and benches, drums, timpani and other similar instruments, xylophones, vibraphones, and other musical instruments, music stands and music racks, cases and other accessories for musical instruments;

Musical Literature. All musical literature, sheet music, and the entire contents of the music library of HSS;

Tangible Personal Property. All other tangible personal property of the Bankruptcy Estate of the Debtor in the Bankruptcy Case;

Intellectual Property. In addition to and aside from the music literature, sheet music, and other contents of the music library of HSS, all assets of an intellectual property nature, including without limitation, names, trade names (including specifically the trade names "Honolulu Symphony" and "Honolulu Symphony Society"), any other trade names used by HSS, trademarks, service marks, trade styles, and logos and any applications with respect thereto and any variations and permutations thereof, fund-raising materials, including donor lists (provided that the trustee shall not disclose the amounts of donations by specific donors or the dates of those donations), recorded music in any format, playbills, programs, and memorabilia, computer programs and data files owned by HSS or to which the Trustee claims any right or interest or to which the Trustee has rights pursuant to any license, general intangibles and goodwill associated therewith, licenses and sublicenses granted and obtained with respect thereto, and rights thereunder, remedies against infringements thereof, and rights to protection of interests therein under the laws of all jurisdictions, trade secrets, processes, patents and applications with respect thereto, know-how, copyrighted materials, instruction manuals, and similar and like property.

EXHIBIT “2”

**BID FORM FOR
HONOLULU SYMPHONY SOCIETY AUCTION**

By executing this Bid Form, _____ (“Bidder”) acknowledges that Bidder has read the **TRUSTEE’S MOTION FOR (1) AUTHORITY TO SELL PERSONAL PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS; (2) EMPLOY HERITAGE GLOBAL PARTNERS, AUCTIONEER; (3) REIMBURSE AUCTIONEER FOR EXPENSES UP TO \$25,000 AND APPROVE COMPENSATION FOR AUCTIONEER; AND (4) APPROVE BIDDING PROCEDURES** filed on February 16, 2012 in the United States Bankruptcy Court for the District of Hawaii in the *In re Honolulu Symphony Society* bankruptcy case, Case No.09-2978, and Bidder hereby agrees:

- (i) To be bound by the terms and conditions set forth in the motion, and as they may be modified by the court at the hearing on the motion;
- (ii) If Bidder’s bid is accepted as the high bid, Bidder is obligated to close the purchase transaction with Trustee within 48 hours from the start of the auction; and
- (iii) If Bidder fails to timely close, Bidder will be in default, Bidder’s earnest money will be forfeited and Trustee will be free to sell the Assets to the next highest bidder then willing and able to close.

BIDDER:

Date

By: _____

Name: _____

Title: _____